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Reconsidering Mandatory Reconsideration

Dave Cowan, Abi Dymond, Simon Halliday and Caroline Hunter

Introduction

One of the key contemporary issues for the administrative justice system, both in the UK¹ and throughout wider Europe,² is the mandatory reconsideration of administrative decisions. Mandatory reconsideration is a feature of a system of administrative redress whereby a citizen who is aggrieved by an entitlement decision must have that decision reviewed by the initial deciding authority before s/he is allowed to pursue redress in an external forum.

Mandatory reconsideration has become a particularly pressing point in the UK in the field of welfare following the 2012 reforms to the system of social security appeals. Under the Welfare Reform Act of that year, all benefits decisions made by the Department of Work and Pensions must undergo mandatory reconsideration before applicants are permitted to appeal to the tribunal system. The number of administrative decisions now subject to this process is colossal: it may well now amount to over 25 million per year.³ The reforms clearly represent a major alteration to the architecture of the administrative justice system for welfare applicants. As such, it has prompted serious concerns on the part of practitioners⁴ and scholars⁵ and, at the time of writing, is the subject of a review by the Social Security Advisory Committee, an independent statutory body that provides impartial advice on social security and related matters.

However, although the scale of the 2012 reforms is striking, mandatory reconsideration is not a new feature of the UK administrative justice system. It has featured previously under the alternative label of compulsory 'internal review'. That said, it is fair to suggest that it has been a neglected feature of administrative justice scholarship, which has more frequently been drawn to the bright lights of tribunals and judicial review.⁶

¹ See, for example, T Mullen 'Access to Justice in Administrative Law and Administrative Justice' in E Palmer et al (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing, 2015)

² See D Dragos and B Neamtu (eds) *Alternative Dispute Resolution in European Administrative Law* (Springer, 2014)

³ This figure derives from the government's 2015 Autumn Statement, projecting caseload volumes for the following benefits during 2016/17: Attendance Allowance; Bereavement Benefits; Carers Allowance; Disability Living Allowance; Employment and Support Allowance; Incapacity Benefit; Income Support; Industrial Injuries Benefit; Jobseekers' Allowance; Maternity Allowance; Pension Credit; Personal Independence Payment; Severe Disablement Allowance; State Pension: <https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2015> (accessed 9th May 2016)

⁴ For example, E Mountbatten, 'Revolving Doors' May/June 2015 (169) *Adviser Magazine*, pp. 7 - 14

⁵ For example, S Nason, *Understanding Administrative Justice in Wales* (Bangor University, 2015)

⁶ Notable exceptions include R Sainsbury, 'Internal reviews and the weakening of social security claimants' rights of appeal' in G Richardson and H Genn (eds), *Administrative Law and Government Action: The Courts and Alternative Mechanisms of Review* (Oxford University Press, 1994); M Harris 'The place of formal and informal review in the administrative Justice system' in M Harris and M Partington (eds), *Administrative Justice in the 21st Century* (Hart Publishing, 1999); S Halliday 'Internal Review and Administrative Justice: some evidence and research questions from homelessness

In this article, we contribute to the growing research interest in mandatory reconsideration. We draw on our empirical research in the field of homelessness law. Mandatory reconsideration (or compulsory ‘internal review’ as it is termed) was introduced into this corner of social welfare provision back in 1997. The authors have conducted research on the topic at various points since, most recently in 2014. We draw on this research to help inform the research agenda that, as Mullen and Thomas note,⁷ is badly in need of comprehensive execution. In doing so, we raise some fundamental questions about how to assess the value of mandatory reconsideration as a structural feature of an administrative justice system.

On the basis of our data analysis, we offer some potentially counter-intuitive insights that make the task of assessing mandatory reconsideration all the more challenging: irrespective of whether mandatory reconsideration fails as a form of legal accountability for individual welfare applicants, it may operate – at least under certain conditions - to improve the quality of initial decision-making across the board, thus operating to improve the plight of all applicants, whether or not they pursue redress.

We then go on to argue that scholars and critics should nonetheless be careful about presuming that mandatory reconsideration necessarily fails as a form of legal accountability for individual welfare applicants. This discussion leads us into the question of how we should normatively assess the structure of redress systems and the place of mandatory reconsideration within them. We suggest a value-based approach and offer some preliminary suggestions about fundamental values that should animate system (re)design. The values we suggest – accuracy and efficiency –combine, however, to create tensions and real world invidious problems. We offer some methods for facing those challenges.

Before we turn to our data, we must, first, offer a description of the system of mandatory reconsideration within homelessness law and, second, give a brief overview of the research projects that produced the data we rely on.

Homelessness Law and Local Authority Decision-Making

Homelessness law, like much social welfare law, is structured around a series of statutory tests which culminate in an entitlement to a public benefit. The relevant statute⁸ is the Housing Act 1996. In order to be ‘successful’ under homelessness law, an applicant must be deemed to be (1) eligible to apply (in relation to immigration status), (2) homeless, (3) in priority need, and (4) not intentionally homeless – the so-called “homeless person’s obstacle race”.⁹ If these obstacles are negotiated successfully, the applicant becomes entitled to “suitable accommodation”.¹⁰

decision-making’ (2001) *Journal of Social Welfare and Family Law* 23(4), pp 473 – 90; and Cowan et al *The Appeal of Internal Review* (Hart Publishing 2003)

⁷ T Mullen and R Thomas ‘Decision-making and Mandatory Reconsideration: response to SSAC consultation’ <https://ukaji.org/2016/03/09/decision-making-and-mandatory-reconsideration-response-to-ssac-consultation/> (accessed 31 March 2016).

⁸ In England and, until the Housing (Wales) Act 2014 came in to force, in Wales.

⁹ P Robson and P Watchman “The homeless persons’ obstacle race parts I and II” (1981) *Journal of Social Welfare Law*, 3(5): 1-15 and 3(6): 65-82

¹⁰ However, the local authority to which the housing application is made may not be responsible for discharging that duty if the applicant has no local connection with that authority but a local connection with a different authority.

Each criterion invites a discretionary decision on the part of the local authority. Rather than a hole in the doughnut, the better analogy for the level and significance of the discretion accorded to local authorities is something like the field inside a cricket boundary rope (particularly apt because of the different areas inside the rope, which count as the “grey areas” of local authority decision making). So, for example, homelessness is defined in the Act as the situation where a person has no accommodation which they can reasonably be expected to continue to occupy;¹¹ a local authority is entitled to take its local housing circumstances into account in deciding whether an applicant is homeless for this purpose.¹² Childless applicants will generally only have priority need if they are “vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason”.¹³ The notion of intentional homelessness focuses on whether a housing applicant has deliberately done or failed to do anything in consequence of which s/he ceased to occupy accommodation which was available for occupation and which it would have been reasonable to occupy.¹⁴

The “suitability” of accommodation offered in fulfilment of a housing duty is a highly contested concept too. The quality of accommodation available to local authorities is often not ideal and limited in quantity. Many local authorities have sought to provide applicants with accommodation in cheaper locations outside their own borders, particularly where applicants would otherwise be caught by the benefit cap.¹⁵

Housing applicants have the right to request an internal administrative review of practically all decisions made against their interest,¹⁶ though they must do so within 21 days of notification of the decision.¹⁷ The reviewer, who must be different from and senior to the officer who made the original decision, has full jurisdiction, although certain time and procedural constraints are placed on them.¹⁸ It is only after the initial decision has been formally internally reviewed that the housing applicant, if still aggrieved, may appeal to the County Court on a point of law.¹⁹ Internal review is, then, like mandatory reconsideration under the Welfare Reform Act 2012, a compulsory rung in the ladder of redress.

Although homelessness decisions in England and Wales, quantitatively speaking, pale in significance when compared to the workload of the Department of Work and Pensions, they nonetheless represent, in absolute terms, a sizeable chunk of welfare decision-making

¹¹ S. 175.

¹² S. 177(2).

¹³ S. 189(1)(c).

¹⁴ S. 191

¹⁵ Such out-of-area placements are now governed by a Statutory Instrument - s. 208; Homelessness (Suitability of Accommodation)(England) Order 2012, SI 2012/2601; DCLG, *Supplementary Guidance on the Homelessness Changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation)(England) Order 2012* (2012).

¹⁶ Where they do not – interim duties to provide accommodation pending decision and/or review – judicial review is the appropriate remedy.

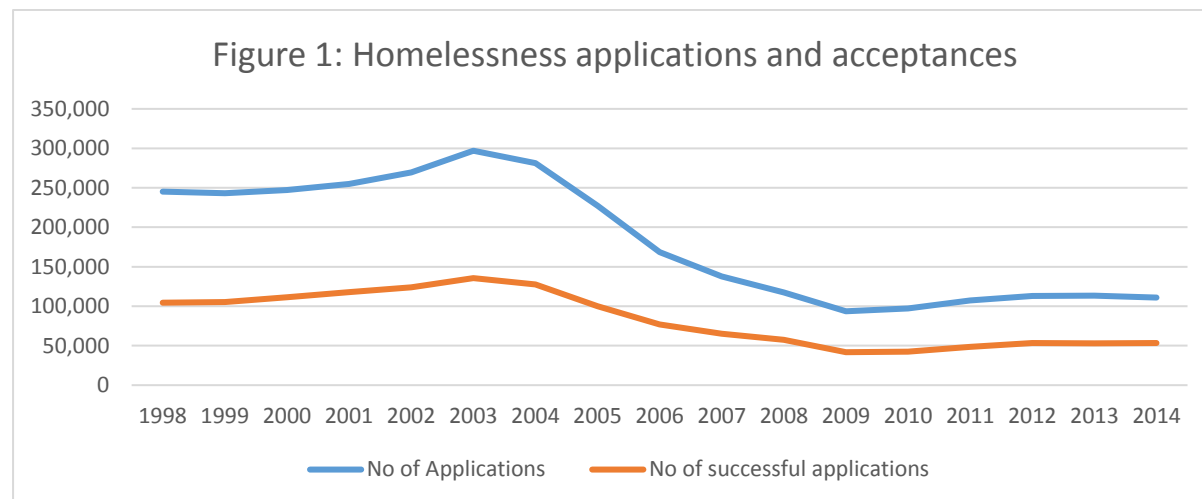
¹⁷ S. 202(3). There is a limited power to allow a review out of time.

¹⁸ See generally The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999, SI 1999/71; for discussion, see D. Cowan, “The judicialisation of homelessness law: A study of Regulation 8(2), Allocation of Housing and Homelessness (Review Procedures) Regulations 1999” [forthcoming] P.L..

¹⁹ S. 204. Before the 1996 Act, homelessness cases had to be brought through judicial review. The 1996 Court of Appeal on point of law includes “the full of issues which would otherwise be the subject of an application to the High Court for judicial review...” *Nipa Begum v Tower Hamlets L.B.C.* [2000] 1 WLR 306; Auld LJ at p. 313.

(albeit that the number of applications has reduced a little over the period of our research: 1998 - 2014).

Table 1 shows, from official statistics²⁰, the incidence of applications for homelessness assistance and the numbers of applications that were 'successful'.²¹



As we can see, the number of applicants who have been rejected for housing assistance is considerable. In relation to the periods surveyed in our research, it ranges from the high of 161,380 in 2003, to 57,520 in 2014. In addition to these rejected applications, however, 'successful' applicants who are aggrieved about the accommodation they are offered may also seek an internal review of the housing allocation decision. The pool of housing applicants who might seek internal review is, accordingly, even higher.

The research

As a research team, we have conducted research about the use and practice of internal review under homelessness law for almost 20 years,²² spurred to do so by the lack of official data about it. Although the government keeps statistics on a number of features of homelessness decision-making, they have never done so in relation to internal review. This is a regrettable omission in our view, one that renders our datasets the only research evidence of the workings and use of the internal review process in this field.

²⁰ See <https://www.gov.uk/government/collections/homelessness-statistics> assessed 04 April 2016

²¹ The reduction in applications since 2004 reflects two significant developments. First, from the early 2000s, local authorities were encouraged to engage more proactively in homelessness prevention work, and they have been apparently successful in so doing (See D. Cowan, *Housing Law and Policy*, 2011). Second, and perhaps related, although one might have anticipated higher numbers of applicants following the banking crash, perhaps counter-intuitively there have been fewer possession claims over the same period across social housing and owner-occupied stock.

²² The results of this research has been published as follows: D Cowan, S Halliday, and C Hunter 'Homelessness Reviews – findings published' (2002) *Legal Action Group* (July) pp. 6-7; D Cowan et al *The Appeal of Internal Review* (Hart Publishing, 2003); D Cowan, S Halliday and C Hunter, 'Homelessness Applicants and Internal Reviews' (2003) *Legal Action Group* (March) p. 8; D Cowan, S Halliday, and C Hunter, 'Adjudicating the Implementation of Homelessness Law: The Promise of Socio-Legal Studies' (2006) *Housing Studies* 21(3), pp. 381-400.

Quantitative research

Five surveys have been sent to local housing authorities (in 1998, 2001, 2003, 2010, 2014), each relating to 6 month periods of internal review activity.²³ Each time, we sent a questionnaire to the “homelessness service manager” shortly after the end of each of the six month survey periods. The periods were (1) January – June 1998; (2) July – December 2000; (3) July – December 2003; (4) January – June 2010; and (5) January – June 2014. The first three questionnaires were paper-based. The 2010 and 2014 questionnaires were distributed electronically, with the questionnaire also attached to the introduction e-mail. We followed up our initial e-mail up to three times. Our final follow-up tended to be concentrated on areas where we wished to see a greater response, most notably London and the South-East to reflect the greater number of applications there.

The questionnaire was split into four sections: (1) about the respondent authority; (2) about the process of review decision-making, including the type of review decision-maker and the incidence of use of lawyers and lay advisors; (3) about the numbers of applications and successful applications; and (4) certain qualitative questions regarding local authority perceptions of the significance of advisors and, from 2003, of the impact of review decisions on the quality of initial decisions.

The response rates to our questionnaires were 54% (1998), 53% (2000), 52% (2003), 49% (2010), and 44% (2014). The profile of respondents according to type of local authority (London Borough, District Council, etc) is similar across the surveys. The profile in terms of respondents’ size of housing stock is slightly different. Since the 2003 survey, there has been a reduction in the proportion of respondents which have over 5000 houses and an increase in the number with no housing stock at all. This reflects the recent trend in the large scale voluntary transfer of local authority housing stock to the housing association sector. In the 2014 survey, 51 *per cent* of respondents indicated that they had no housing stock at all.

In terms of the political control of respondents, the surveys from 2003 had a much higher proportion of Conservative controlled authorities, with a parallel reduction in Labour and Liberal Democrat councils (the number of respondents with no overall political control remaining fairly constant). In part, this reflects the increase in Conservative-controlled local authorities; in the 2014 survey, 50 *per cent* of respondents identified their authority as being Conservative controlled.

Qualitative research

Additionally, we draw on two qualitative research projects. In the first (qualitative study 1) – a study that focused directly on internal review – we conducted ethnographic research, examining homelessness applicants who were eligible to seek internal reviews as well as the housing authorities that would conduct them. Fieldwork took place for approximately one year in each of two sites between June 2000 and September 2001. In both sites there were three phases of fieldwork. Initially, a period of observation took place over a period of ten weeks. During this time our fieldworkers learned about decision-making behaviour and routines within the local authorities. This phase was followed by a period of interviewing with ‘unsuccessful’ homelessness applicants and with aggrieved successful applicants (those who had been offered long-term housing with which they were unhappy). Finally, a number of taped interviews and focus groups with local authority officers and interviews with local solicitors and housing advisors took place.

²³ We should record our thanks here to the Nuffield Foundation and the Universities of Bristol, Oxford, Sheffield Hallam, Strathclyde, and York for their financial and other assistance with this survey work over the years.

The second study (qualitative study 2) explored the administration of homelessness law more broadly (examining decision-making about applicants who were ‘vulnerable’ within the meaning of the legislation) but included a focus on internal review.²⁴ This fieldwork, conducted between 2011 and 2012, took place in three authorities, purposively selected to include both urban and rural jurisdictions, large and small authorities. For the purposes of this article we have drawn from semi-structured in-depth interviews with local authority managers (or senior representatives in an equivalent role) responsible for assessing homelessness applications. Interviews explored each local authority’s organisational policies and procedures as regards the use of medical evidence (including in relation to internal administrative reviews), and explored the rationale behind the different approaches adopted.

In the sections that follow, we draw selectively on our data to raise research questions about mandatory reconsideration. We offer a brief analysis of the data before going on to discuss its implications for administrative justice theory.

The Incidence of Mandatory Reconsideration and Subsequent Appeals

Our surveys asked local authorities both about the incidence of internal review applications and the incidence of County Court appeals during a six month period. When these datasets are compared to each other, and then compared to the official statistics about the incidence of rejected homelessness applications, we can see that homelessness law is no different from most other areas of the administrative justice system whereby we see radical drop off rates between initial applications, internal reviews and subsequent appeals.²⁵

Table 1: Requests for internal review

No of internal review applications	YEAR				
	1998	2000	2003	2010	2014
0 - 5	67%	59%	45%	63%	61%
6+	32%	41%	56%	35%	39%
Total (N)	201	199	195	159	139

Table 2: County Court appeals

No of county court applications	YEAR				
	1998	2000	2003	2010	2014

²⁴ This work was supported by the Economic and Social Research Council (Grant No. RES-RES-002-22-4461). More general findings from the project have been published as follows: Bretherton, J, Hunter, CM & Johnsen, S '“You can judge them on how they look...”: homelessness officers, medical evidence and decision-making in England' (2013) *European Journal of Homelessness*, 7(1), pp. 69-92; Hunter, CM, Bretherton, J, Halliday, S & Johnsen, S, 'Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers' (2016) *Journal of Law & Policy*, 38(1), pp. 81-95.

²⁵ See M Adler and J Gulland (2002) *Tribunals for Users’ Programme: Literature Review of User’s Experiences, Perceptions and Expectations* (unpublished report for Lord Chancellor’s Department, 2002)

Zero	89%	75%	76%	79%	77%
1 - 3	7%	22%	17%	16%	18%
4+	4%	4%	8%	4%	5%
Total (N)	204	166	170	119	117

In isolation, these data only permit us to observe the drop off: the proportion of aggrieved housing applicants that end up pursuing internal review is tiny; the proportion of aggrieved internal review applicants that end up appealing to the county court also seems small. We are unable to speculate on the basis of these statistics about any causal relationship between the introduction of compulsory internal review and the incidence of subsequent appeals. Nonetheless, data from qualitative study 1 clearly suggest that there is a problem of applicant fatigue in relation to pursuing redress, one of a number of reasons we identified in explaining low rates of internal review requests. This finding supports similar discoveries in other areas of social welfare.²⁶ It also, in turn, supports recent speculation, on the basis of time series data, that the recent introduction of mandatory reconsideration in social security has had a significant and negative impact on the incidence of tribunal appeals.²⁷

The Incidence of Legal Representation

Sunkin *et al* have reported a correlation between high levels of judicial review challenge against particular local authorities and the presence of legal services within those authorities' boundaries.²⁸ That finding makes sense – the judicial review process is complex and unclear; the N461 claim form assumes that a claimant will be represented (as does the N463 application for urgent consideration); and administrative law is specialist, not least in determining its ambit and scope.

Homelessness internal review, on the other hand, is structured differently. The law may be complex and uncertain, and local authorities' decision-making scope broad, but the actual entry point to the review process is quite simple. An applicant "requests" that the authority conduct a review of the decision and the ambit of a "request" is to be interpreted generously.²⁹ The applicant does not need to know homelessness law at all. The review is a *de novo* re-consideration based on the current facts.

Genn has observed that about half the people who try to deal themselves with civil law justiciable matters give up.³⁰ She notes that:

²⁶ See, e.g., R Sainsbury and T Eardley, *Housing Benefit Reviews* (HMSO, 1991); G Dalley and R Berthoud, *Challenging Discretion: The Social Fund Review Procedure* (Policy Studies Institute, 1992); S Lloyd-Bostock and L Mulcahy (1994) 'The social psychology of making and responding to hospital complaints: An account model of complaint processes' 16(3) *Law & Policy* pp. 123-147; R Atkinson, T Buck, D Pollard, and N Smith, *A Regional Study of Local Authority and Court Processes in Homelessness Cases* Research Series No 9/99 (Lord Chancellor's Department, 1999)

²⁷ T Mullen 'Access to Justice in Administrative Law and Administrative Justice' in E Palmer et al (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing, 2015); G McKeever, 'Employment and Support Allowance' (2015) *Journal of Social Security Law*, pp. 6 – 9.

²⁸ Sunkin, M, Calvo, K, Platt, L and Landman, T 'Mapping the use of judicial review to challenge local authorities in England and Wales' (2007) *Public Law* 545–67

²⁹ *Nzamy v Brent LBC* [2011] HLR 20.

³⁰ For similar findings in the USA, see R Miller and A Sarat, 'Grievances, Claims and Disputes: Assessing the Adversary Culture' (1981) 15 *Law & Society Review*, 252

Success in handling the problem alone depends on the type of problem, the competence of the person dealing with the problem, and the intransigence of the opposition.³¹

By contrast, homelessness applicants' requests for an internal review will always give rise to an outcome with limited input from them (unless they withdraw the request).³²

Intransigence on the part of the local authority has been designed out of the system. The review has a life of its own in that the applicant, once the review has been requested, can sit by passively, waiting for the outcome.

As we can see, then, the internal review scheme has been set up to create an apparently level playing field, where legal competence and knowledge is irrelevant and intransigence should not occur. The recognition that applicants are likely to be acting in person also underpins at least some of the jurisprudence about the internal review process, using this as a justification for increased procedural protection.³³ In short, the system of internal review is premised on use by applicants without representation.

Our survey data, however, tell a different story. The practice of internal review has departed significantly from the design fantasy. Although we found no correlations in our data between levels of legal representation and the incidence of internal review applications, the proportion of internal review applicants being represented has nonetheless increased over the period of our research. In our most recent survey, more than a third of local authorities reported that *most* internal review applicants are now legally represented.

Table 3: What proportion of internal review applicants are legally represented?

Proportion of internal review applications legally represented	1998	2001	2003	2010	2014
Half or more	10%	15%	13%	28%	37%
Less than half	90%	85%	87%	72%	63%
Total (N)	141	185	180	137	120

While the surveys simply demonstrate the increase in legal representation, data from qualitative study 2 offer some clues about why this increase may have occurred. Managers in two of the three local authorities in the study indicated that they generally recommend that potential internal review applicants seek specialist advice:

And what we say to people when they ask for a review ... is if you're going to ask for a review, it's best if you seek some advice because of the complexities of the reviews and what people are looking for ... at review. So they're encouraged to, to go away and to, we don't give individual names, we don't point them towards [local solicitor] or Law Centre, but they get the information to make their own choice and we do encourage people, at review stage, to actually get representation.

NC Manager

³¹ H Genn *Paths to Justice* (Hart Publishing, 1999) at p 251.

³² H. Genn, *Paths to Justice* (1999), pp 250-1.

³³ "Plainly it is necessary to look at a handwritten letter written by an unrepresented person in the situation of Mrs Nzamy with common sense and to take a broad view with regard to what it is that is being sought by such a letter": *Nzamy*, [17]; *Banks v Kingston-Upon-Thames RLBC* [2008] EWCA Civ 1443; [2008] 2 WLR 1160, [71].

Now we don't have a habit of recommending anybody to anybody in terms of getting advice, but we may say to them, well look, you might want to seek independent housing advice and assistance. We do give advice agency details like Shelter, CAB, local housing advice agencies, but we don't give out lists of solicitors.

London Manager

Local authorities themselves, then, in addition to the housing applicants, may also increasingly be framing the internal review process as a form of dispute resolution, as opposed to a mere second look, and one where legal assistance is prudent.

The significance of legal representation

An assessment of the significance of this legal representation, however, is not straightforward. There is now a wealth of studies that suggest that welfare applicants fare better in redress forums if they are legally represented, despite the fact that such forums have been designed to function without the need for representation.³⁴

These findings have often been explained in terms of the increasing technical complexity of welfare law and the fact that applicants without expert representation are, accordingly, at a disadvantage in understanding and negotiating those technicalities – the 'trap of hidden legalism' as Monsma and Lempert have put it.³⁵ Our qualitative data suggest an additional reason why representation, at least at times, may increase an applicant's chance of success. In qualitative study 2, the benefits of an increased coherence of internal review application was identified:

you get a nice and neat presented package when you get a representative ... a solicitor or whatever writing out five pages of why their client is vulnerable or whatever and the reasons why, and I think that does make a big difference ... [I]f it's nicely presented by somebody, it's a much more straightforward process... [W]hereas a chaotic person who isn't accessing anything is going to be less likely to present a coherent ... argument.

London Manager

Our survey data, however, have proved ambivalent about the impact of legal representation on internal review outcomes. In 2010, our data suggested that there was, in Adler's terms,³⁶ a 'premium' associated with legal representation.

Table 4: Impact of Legal Representation on Internal Review Outcomes (2010)

Number of decisions overturned	Proportion represented by lawyers:-		All (%)
	Half or more	Less than half	
Zero	14%	48%	38%
1-5	68%	43%	50%
6+	19%	9%	12%

³⁴ S Halliday and C Scott 'Administrative Justice' in P Cane and H Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010)

³⁵ K Monsma and R Lempert, 'The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board', (1992) *Law & Society Review*, 26: 627-67.

³⁶ M Adler 'Social security and social welfare' in P Cane and H Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010)

Total (N)	37	99	136
Differences in the table are significant at the 99% level of confidence ($p < 0.01$).			

Yet in 2014 no such statistically significant correlation was evident in the survey data. We must remain agnostic, then, for the time being about whether, over time, legal representation will prove to increase applicants' chances of success at internal review.

Nonetheless, there is another sense in which legal representation may have an impact. It relates to the potential impact of internal review on the *general* quality of initial decision-making, as opposed to an individual's chances of success – an issue that has been largely overlooked in administrative justice scholarship.

The general impact of internal review on the quality of initial decision-making

Since 2003, we have asked local authorities about their perceptions about whether practices of internal review improve the quality of ongoing initial decision-making. The data show an increasing sense of the value of internal review in improving routine practice.

Table 5: General Impact of Internal Review on Quality of Initial Decisions

	2003	2010	2014
Improves quality	71%	73%	82%
No impact on quality	29%	25%	15%
Decreases quality	0%	1%	2%
Total (N)	179	151	136

Indeed, our 2014 data provide some evidence to suggest that the higher the internal review caseload of local authorities, the more likely they are to hold this view, albeit that the correlation is weak ($r = .15$, $P < .05$). What is most interesting for current purposes, however, is that the fact that our 2014 data also suggest that, the greater the percentage of internal review applicants represented by lawyers, the more likely it may be that local authorities will hold this positive perception of the internal review process. When we compared the percentage of individuals who received any form of representation (be it from a lawyer, lay person or other) to the percentage of individuals without such representation, there was no statistically significant relationship between the existence of representation and the perceived quality of the internal review process. However, when we compared the percentage of individuals who were represented by a lawyer to the percentage of individuals without such specialist legal representation, we found an increase in legal representation to be correlated with positive assessments of the review process ($r = .17$, $p < .05$).

So legal representation, irrespective of whether it improves the chances of individual clients under an internal review process, may be part of a more general phenomenon whereby the practice of internal review feeds back positively onto the quality of ongoing initial decision-making. This complicates, we suggest, any assessment we might wish to make of mandatory consideration as a feature of administrative justice. This suggestion is explored further in the next section where we discuss the significance of our findings for administrative justice theory.

Three key assertions from the data

What might we take from our findings about homelessness internal review in reconsidering mandatory reconsideration? In light of our data, how should we assess mandatory

reconsideration from a perspective of administrative justice theory? We offer three initial assertions.

Hybridity

Our first point is that, in more senses than one, mandatory reconsideration is something of a hybrid feature of administrative justice. In terms of design, this is obvious. It is a form of redress in one sense, but is also a form of primary decision-making in another. In terms of accountability, this is also true. Applying Romzek and Dubnick's celebrated typology,³⁷ mandatory reconsideration is a hybrid of bureaucratic and legal forms of accountability. It is a second look by a public agency at one of its decisions but is a compulsory rung on the ladder of redress leading to external legal review.³⁸

But as we have noted above already, our data suggest that this hybrid nature may also be reflected in its *use* by welfare applicants and its *practice* by housing authorities. Although homelessness internal review was conceived in policy terms as an easy-to-use check on the quality of an initial decision (the equivalent of asking to see the manager), over time it has become a much more legalised form of dispute resolution whereby the use by applicants of lay and legal representatives is commonplace.

Assessment on its own terms

The second point is that, although conceptually and empirically, mandatory reconsideration is a hybrid mechanism of administrative justice, straddling the bureaucratic and the legal, the internal and the external, its normative assessment must focus squarely on its qualities in and of themselves, and not as the first of a potential sequence of redress opportunities. Any normative assessment of the value of mandatory reconsideration as a structural feature of an administrative justice system must accept the empirical reality that, for most welfare applicants pursuing grievances, mandatory reconsideration or internal review will be their *only* experience of redress. In other words, little comfort should be taken from the fact that higher rungs on the redress ladder enjoy certain features that might be taken to mitigate their absence on the bottom rung.³⁹

An ambiguous relationship to administrative justice

The third point is that mandatory reconsideration may have quite an ambiguous relationship to administrative justice. It is now commonplace for scholars to refer to the fact that the concept of 'administrative justice' has a dual focus: (1) on the justice of initial administrative decision-making (a focus on public administration); and (2) on the remedies available to those who feel aggrieved by initial decisions (a focus on the architecture of redress).⁴⁰ Much of the critique of mandatory reconsideration focuses too heavily on this latter focus and insufficiently on the former, we would suggest. *Even if* mandatory reconsideration is deficient as a form of redress, it may, as our data suggest, have a positive contribution to

³⁷ B Romzek and M Dubnick 'Accountability in the Public Sector: Lessons from the Challenger Tragedy' (1987) *Public Administration Review*, 47(3), pp. 227-238

³⁸ In this sense we might also say that it is a hybrid of bureaucratic administration and dispute resolution.

³⁹ Here we must contrast the normative from the purely doctrinal. As is well known, for the purposes of assessing compliance with the ECHR, internal review is considered within the context of the redress system as a whole. See, e.g., *Fazia Ali v UK* 2015 (Application 40378/10).

⁴⁰ See, for example, Adler, M (2003) 'A Socio-Legal Approach to Administrative Justice' 25 *Law and Policy* 323; S Halliday and C Scott 'Administrative Justice' in P Cane and H Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010); T Mullen 'Access to Justice in Administrative Law and Administrative Justice' in E Palmer et al (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing, 2015)

make to the justice of ongoing bureaucratic administration. In other words, even if it fails to some extent (perhaps entirely) as a form of legal accountability, it might still have considerable value as a form of bureaucratic accountability.

This latter point, we would suggest, significantly complicates the normative assessment of mandatory reconsideration. Administrative justice policy⁴¹ and scholarship⁴² has spent considerable energy recently stressing the normative and practical importance of getting decisions right first time. And given the problem of drop-off (discussed above), we might suggest that the major task for administrative justice scholarship is to focus more on the conditions that might sustain better decision-making for the mass of welfare applicants, and less on the structure of redress mechanisms for the few who pursue grievances. Mandatory reconsideration may prove to be an important technique for that policy and research agenda.

The italicised phrase ‘even if’ above operates as a bridge between the analysis of the findings from our homelessness research projects and the next section of the article, which builds on but moves beyond our empirical findings. Our argument will be that, irrespective of its potential role in improving the quality of initial decision-making, we should be careful about presuming that mandatory reconsideration *necessarily* fails as a form of legal accountability for individual welfare applicants.

The Universe of Administrative Wrongs

To substantiate this assertion, it may be helpful to think about the role of reconsideration as a response to administrative wrongs; and, in turn, it may be helpful to ‘zoom out’ and consider the universe of administrative wrongs that makes up the subject of administrative law.

Craig has recently given an interesting historical account of the foundations of administrative law.⁴³ It demonstrates that, for far longer than many of us imagined, there has been an administrative law concerned with what we might loosely term the ‘legality’ of administrative decisions – making decisions within jurisdiction; using discretion appropriately; observing due process; and the protection of basic rights.

More recently in historical terms, as Stebbins⁴⁴ and Arthurs⁴⁵ have separately demonstrated, as our system of administrative government grew, including the growth of the welfare state, so our system of administrative law developed a concern for creating ways in which citizens could trigger a formal check on the substantive correctness of administrative decisions.⁴⁶ Unlike the older legality review, which constitutionally eschews a consideration of the merits

⁴¹ Department for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals* (White Paper Cm 6243 published July 2004)

⁴² Most recently, R Thomas ‘Administrative Justice, Better Decisions and Organisational Learning’ (2015) *Public Law*, pp, 111-31

⁴³ P Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (Cambridge University Press, 2015)

⁴⁴ C Stebbings, *Legal Foundations of Tribunals in Nineteenth Century England* (Cambridge University Press, 2006)

⁴⁵ H Arthurs *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth Century England* (Toronto University Press, 1985)

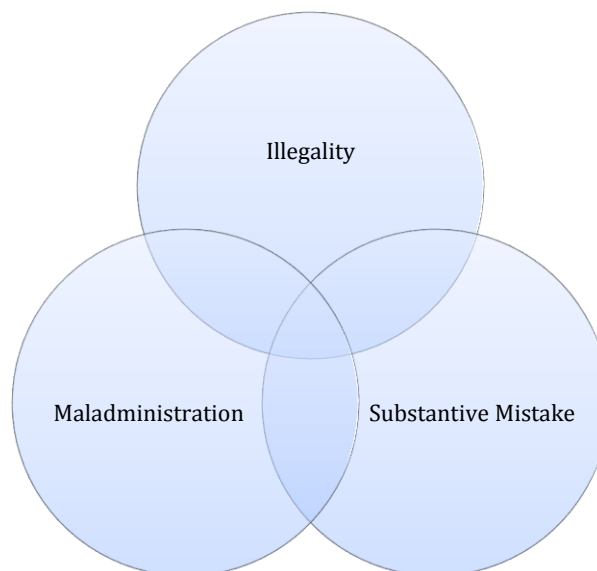
⁴⁶ See also T Mullen ‘Access to Justice in Administrative Law and Administrative Justice’ in E Palmer et al (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing, 2015).

of an administrative decision, a check on substantive correctness is all about merits – a second substantive look at an initial decision (a reconsideration) to see if it should be permitted to stand.

More recently still, first in relation to central government, then in relation to local government (and from there to almost everything else), we have seen the development of maladministration as a third basic form of administrative wrong.⁴⁷

In this way, we might present an ideal typical image of the universe of administrative wrongs:

Figure 2: The Universe of Administrative Wrongs



This ideal typical account deliberately focuses on administrative wrongs, rather than on redress mechanisms.⁴⁸ It is possible, of course, to suggest that certain redress mechanisms might be thought of as being *characteristic* of certain wrongs.⁴⁹ In this way, we might associate the history of the common law courts with illegality, the development of tribunals with substantive mistake, and the development of ombudsmen with maladministration. But while this might be true empirically, we must be careful not to slip from the empirical to the conceptual or the normative. There is a danger, in other words, in presuming that certain remedies or redress forums are *essential* responses to particular forms of administrative wrong.

⁴⁷ See T Buck, R Kirkham and B Thompson *The Ombudsman Enterprise and Administrative Justice* (Ashgate, 2011)

⁴⁸ Others have modelled redress mechanisms within the administrative justice context. For an analysis that models (1) the relationships between mechanisms within an overall system, and (2) common functions between mechanisms, see V Bondy and A le Sueur *Designing Redress: a study about grievances against public bodies* (Public Law Project, 2012). For an analysis that offers models of the various redress mechanisms themselves, see the Law Commission's Consultation Paper No 187: *Administrative Redress: Public Bodies and the Citizen* (2008)

⁴⁹ See, for example, M Adler 'A Socio-Legal Approach to Administrative Justice' (2003) 25 *Law and Policy* 323; V Bondy and A le Sueur *Designing Redress: a study about grievances against public bodies* (Public Law Project, 2012) at p. 9.

The problem with slipping from the empirical to the conceptual – presuming, for example, that because tribunals have developed as a check on claims of substantive mistake, the concept of a tribunal must revolve around review for substantive mistake – is that, in reality, the jurisdiction of redress forums may be quite mixed in practice.⁵⁰ A single redress forum may focus on more than one type of administrative wrong. A tribunal, for example, may be able to focus both on illegality and substantive mistake. The courts may be able to focus, to some extent, on substantive mistake as well as illegality. An ombudsman may also be able to focus on substantive mistake as well as maladministration.

The problem with slipping from the empirical to the normative is that the reasoning is backwards. One starts with the features of the redress forum (e.g. independence) that one associates with a particular kind of wrong (e.g., substantive mistake), and reasons that it is normatively required. Yet, a comparative examination across time and space would reveal the variable features of a single redress forum. For instance, although UK tribunals have evolved from being part of the administration to being a part of an independent judiciary,⁵¹ tribunals in Australia have remained firmly a feature of public administration. For a variety of reasons, Australia did not have its Franks⁵² and Leggatt⁵³ moments.⁵⁴

In short, our core assertion here is that structural design and redesign within the administrative justice system should be driven by values (and transparently so). The design of an administrative justice system should be flexible and responsive, rather than fixed. This affects how we should theorise mandatory consideration from an administrative justice perspective. Consider, for instance, the objection that a system of mandatory reconsideration offends because *de facto* it precludes most applicants with grievances from getting an independent consideration of their claim of substantive mistake. Such an objection is problematic – incomplete – unless it goes on to justify why applicants *should* have their claims of substantive mistake looked at by an independent body. The redress system designed into homelessness law permits only very limited independent review of substantive mistake.⁵⁵ We can see that this is quite different from much of social security law, where review for substantive mistake at independent tribunals is permitted.⁵⁶ What, if anything, justifies this difference? Administrative justice scholarship must develop value-based perspectives on the structural features of the system in order to broaden and deepen theory.

Our assertion here clearly raises the question of what the administrative justice values are that should inform system design (and redesign). It is this issue that we consider next.

Values for structural (re)design

Our aim in this section is to consider how debates about design should be structured, focusing particularly on the issue of mandatory reconsideration. How administrative justice

⁵⁰ See V Bondy and A le Sueur *Designing Redress: a study about grievances against public bodies* (Public Law Project, 2012)

⁵¹ T Mullen 'Access to Justice in Administrative Law and Administrative Justice' in E Palmer et al (eds) *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing, 2015)

⁵² Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries*, Cmnd. 218

⁵³ *Tribunals for Users: One System, One Service* (TSO, 2001)

⁵⁴ P Cane *Administrative Tribunals and Adjudication* (Hart Publishing, 2009)

⁵⁵ To the county court on "a point of law": Housing Act 1996, s.204.

⁵⁶ Social Security Act 1998, s.12. The appeal is not limited; a second appeal to the Upper Tribunal lies on "a point of law": Tribunals, Courts and Enforcement Act 2007, s.12.

systems should be designed is a large topic, one that should be the subject of a serial collective research effort. Our ambition here is to contribute to that ongoing research endeavour.

Bondy and Le Sueur have conducted important initial work on the design of redress systems for administrative law matters.⁵⁷ They suggest nine “candidates for inclusion in a statement of principles about redress design”.⁵⁸ Their nine principles cover the domains of: (a) constitutional context; (b) the design process; and (c) the substance of design. Within the limits of an article such as this, we restrict ourselves to the third of Bondy and Le Sueur’s domains and seek to build on their contribution. And like them we do not claim any exhaustiveness in our analysis, aiming merely to offer some preliminary suggestions (though ones we hope are catalytic to the development of the field). However, whereas they frame their analysis in terms of principles that should inform the substance of design, we frame our contribution in terms of the values that should be promoted in structural design. We must also stress that we do not offer any precise prescriptions about particular designs that should emerge from debate. Indeed, it is a basic tenet of our analysis that such debate should take place in a piecemeal fashion according to the particularities of a policy area. Although Mullen and Thomas are right to argue for a “system of internal review”,⁵⁹ this should not mean, we suggest, that any such system should be uniform across the entire administrative justice sector.

What values, then, should be foundational to structural design? We restrict our discussion to two of the most basic:

- the accuracy of entitlement decision-making
- the efficiency of administration (including both initial decision-making and the redress system)

Though we focus on but two values, both of which are stated above in simple and economical terms, their application to real world contexts is likely to be challenging. We set out these challenges in the next sections before going on to suggest some principles that should assist designers in facing them.

Accuracy

A concern with the accuracy of administrative decisions does not feature explicitly in Bondy and Le Sueur’s list of principles. This is no failing on their part, however. It merely reflects the fact that the value of accuracy is self-evident. Indeed, it is implicit in their final suggested principle:

As well as resolving individual grievances, redress mechanisms should contribute to improvements in public service by providing opportunities for public bodies to learn lessons.⁶⁰

⁵⁷ V Bondy and A le Sueur *Designing Redress: a study about grievances against public bodies* (Public Law Project, 2012)

⁵⁸ *ibid* at p. 37.

⁵⁹ T Mullen and R Thomas ‘Decision-making and Mandatory Reconsideration: response to SSAC consultation’ <https://ukaji.org/2016/03/09/decision-making-and-mandatory-reconsideration-response-to-ssac-consultation/> (accessed 31 March 2016).

⁶⁰ V Bondy and A le Sueur *Designing Redress: a study about grievances against public bodies* (Public Law Project, 2012) at p. 37.

The business of “resolving individual grievances” and the notion of “learning lessons” must, at some level, reflect (amongst other things) a concern with the accuracy of decisions. And what exactly do we mean by ‘accuracy’? In relation to our focus in this article on applications for various welfare benefits, the value of accuracy concerns an ascertainment of the facts of a case sufficient to enable the public official properly to apply the law to those facts. This (admittedly slightly tortuous) elaboration acknowledges that the extent and detail of fact-finding that precedes the application of law by public officials will vary by context. For some legislative schemes and policy fields, only basic facts are required. In others, more detailed sets of facts are needed. Nonetheless, irrespective of the extent of complexity or detail required, the factual picture to which public officials apply the law should be accurate; and the application of the law should be consistent with the intention of Parliament and the guidance of the courts. ‘Accuracy’, then, embraces both the proper ascertainment of facts and the appropriate application of law.

This quotation above from Bondy and Le Sueur helps to illuminate the challenge which policy-makers and other ‘designers’ face in trying to promote accuracy in structural design. The challenge, which we adverted to in earlier sections, concerns the weight to be attached to accuracy in relation to the cases of individual grievants as opposed to those of all applicants (most of whom will not pursue grievances). The accuracy ‘pay off’ of mandatory reconsideration may well vary according to one’s focus.

Mandatory reconsideration, by definition, suffers from a lack of independence. A lack of independence may, in turn, threaten the impartiality of the fresh look at the facts of a case and the application of law to those facts. And yet, permitting grievants to by-pass internal review and go straight to external review may well reduce the educative impact of the review process. External review is more remote from the front-line of administrative agencies than is internal review; and empirically speaking, the greater the ‘relational distance’⁶¹ between the front-lines and the reviewers, the greater the barriers are to positive lessons being learned by those on the front-line.⁶² As the research on the impact of judicial review on bureaucracies shows, there is much that stands in the way of front-line officials internalising and putting into routine practice the lessons that, theoretically, can be learned from external review – lessons that will improve the quality of front-line decision-making, including its accuracy.⁶³ By way of contrast, as our qualitative study 1 showed and as our survey data suggest, internal review in at least some welfare contexts has enhanced educative potential when compared to external review. Officers who are senior to those on the front-line and who conduct internal reviews are capable of taking on a role akin to internal compliance officers. Where they are proximate to the front-lines, given the routine nature of the internal review activity, they will be in a privileged position to try and improve front-line practices as part of their remit.⁶⁴

So, empirically, the gains of individual grievants under a system of directly-accessible external review may be at the expense (to some degree at least) of the larger body of welfare applicants who do not complain. Such is an invidious real world problem.

⁶¹ P Grabosky & J Braithwaite *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* (Oxford University Press, 1986)

⁶² S Halliday *Judicial Review and Compliance with Administrative Law* (Hart Publishing, 2004)

⁶³ M Hertogh and S Halliday (eds) *Judicial Review and Bureaucratic Impact: International and Interdisciplinary Perspectives* (Cambridge University Press, 2004)

⁶⁴ See D Cowan, S Halliday, and C Hunter, ‘Adjudicating the Implementation of Homelessness Law: The Promise of Socio-Legal Studies’ (2006) *Housing Studies* 21(3), pp. 381-400 at p. 394.

Efficiency

For some observers, the notion of efficiency as a value may be less obvious (particularly when compared to accuracy). Yet, administrative law has long turned one of its 'Janus faces' as Craig puts it,⁶⁵ towards the interests of public officials in implementing public policy, which ultimately translates into the collective public interest in having policy implemented. The efficiency of the delivery of public services should be - and indeed is - a value of administrative law.⁶⁶ Such is demonstrated, for example, in the case law on the demands of Art 6 of the ECHR on the architecture of redress systems, where it is discussed in terms of "expediency" being a relevant factor in assessing Convention compliance.⁶⁷ The same logic, of course, applies to the efficiency of the overall redress system.

The challenge here – and it is an obvious and familiar one – is that the pursuit of efficiency in administration often comes at the cost of other cherished features of administrative process, such as the extent of applicant participation in the decision-making process⁶⁸ and the accommodation of case complexity.⁶⁹ The more a citizen-applicant participates in the administrative process (e.g., by way of fact-finding interviews and fair hearing protections), the slower the decision-making process is likely to be. The more complex a factual picture that is required for the application of law, the more onerous and slow the fact-finding process is likely to be.

The promotion of efficiency in the administration of a welfare scheme, including consideration of the significance of potential redress events, comes at the cost of participation (and all the dignity benefits that brings)⁷⁰ and the nuance of the case being presented for determination (which can also be significant for dignity).⁷¹ This too, then, is an invidious real world problem.

Facing the Challenges

The inevitability of tension and trade offs is, of course, familiar territory for administrative lawyers. Administrative law itself is structured around two fundamental and inter-connecting tensions that play out in the application of its doctrines.⁷² The first is about who ultimately gets to decide what – the tension between agency autonomy and external control; the second is about whose interest should be privileged – the tension between collective and individual applicant/grievant interests.

How these tensions have been debated in relation to other aspects of administrative justice should guide us in relation to system design and the potential role of mandatory reconsideration. Two issues have been particularly significant in facing the challenges of

⁶⁵ P Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (Cambridge University Press, 2015)

⁶⁶ S Halliday, *Judicial Review and Compliance with Administrative Law* (Hart Publishing, 2004)

⁶⁷ *Zumtobel v Austria* (1994) 17 EHRR 116; *Bryan v UK* (1995) 21 EHRR 342; *Kingsley v. the United Kingdom* (2002) 35 EHRR 10; *Alatulkila and Others v. Finland* (2006) 43 EHRR 3; *Fazia Ali v UK*, 2015 (Application 40378/10).

⁶⁸ S Halliday and C Scott, 'A Cultural Analysis of Administrative Justice' in Adler, M (ed) *Administrative Justice in Context* (Hart Publishing, 2010)

⁶⁹ S Halliday, J Ilan and C Scott (2012) 'Street-Level Tort Law: The Bureaucratic Justice of Liability Decision-Making' *Modern Law Review* 75(3) 647-67

⁷⁰ T Tyler 'What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures', (1988) *Law & Society Review* 22: 103-106

⁷¹ Lens, V. 'In the Fair Hearing Room: Resistance and Confrontation in the Welfare Bureaucracy', (2007) *Law & Social Inquiry*, 32: 309-32

⁷² S Halliday *Judicial Review and Compliance with Administrative Law* (Hart Publishing, 2004)

these trade offs: (1) the nature of the stakes for welfare claimants in the particular policy field; and (2) the role of special knowledge and expertise in the exercise of administrative discretion.⁷³

Where, in relative terms, the policy area involves more important social welfare issues for individuals – where the stakes are higher – the balance should be tipped in favour of stronger individual protections for accuracy. Easy access to independent review may be encouraged given the increased chance of impartiality of review that an independent body usually brings. Thus strong protections for individual grievants should be preferred over the general quality improvements that a higher incidence of mandatory reconsideration might bring. Equally, higher social welfare stakes would suggest that citizen participation and the accommodation of complexity would be privileged over the demands of efficiency. Where, however, the individual stakes are lower, we can expect the demands of systemic efficiency to have a higher value relative to the correction of individual errors.

In relation to the issue of expertise, where, in relative terms, external redress bodies lack the capacity adequately to review discretionary expertise, the more we might value agency autonomy rather than external legal control. Mandatory reconsideration, then, despite its tendency to diminish the incidence of external appeal, might be regarded as a more appropriate form of routine redress.

Conclusion

According to some, we live in an “age that tends to encourage hyperbole and scientific overreach.”⁷⁴ In light of this, it is generally regarded as good practise to counsel our research students to avoid claiming too much on the basis of their data.⁷⁵ Proportionality, we might say, is as much a research value as it is a legal value for public administration. In this vein, we conclude this article by stressing its limits.

We have used research evidence about the use and incidence of compulsory internal review in homelessness law to fuel debates about the appropriateness of mandatory reconsideration as a feature of administrative justice systems. Our main empirical findings were two-fold: first, that, contrary to design, mandatory reconsideration in homelessness law has drifted towards being a legalised form of dispute resolution; second, that the local authorities who conduct such reconsiderations perceive that their reconsideration experiences improve the quality of routine primary decision-making. On the basis of these empirical findings, we suggested that mandatory reconsideration may have an ambiguous relationship to administrative justice.

Our core argument, however, needs to be qualified by three cautionary remarks. First, our data on the impact of mandatory reconsideration on the quality of primary decision-making derives mainly from the *opinions* of senior officers in responding to our survey questionnaire. The data is quite ‘soft’ in other words. We simply do not know the extent to which the perceptions of our respondents match the reality.

⁷³ *ibid*

⁷⁴ P Takacs, Review of N Lane, *The Vital Question: Energy, Evolution and the Origins of Complex Life* (2016) *Quarterly Review of Biology* 91, 203-4.

⁷⁵ See, for example, Al Ahram ‘The Theory and Method of Comparative Area Studies’ (2011) *Qualitative Research* 11(1) 69-90.

Second, even if perceptions do match reality, we do not know how our respondents interpreted the notion of 'quality'. There may have been considerable variation amongst the interpretations that underpinned survey answers. Equally, even if there was considerable overlap in how our respondents interpreted 'quality', such interpretations may not always resemble what administrative justice scholars, or policy makers, or external reviewers would regard as 'quality'.

Third, we must be careful not to presume or suggest that what we found within the field of homelessness will be replicated in other fields of welfare. Local authorities are, as their designation suggests, *local*. Relative to centralised areas of welfare administration, they are small. Further, homeless persons units are generally small-ish teams within these local agencies. Officers conducting internal reviews may, then, have a more proximate relationship to the front-line workers who make routine primary decisions. This, as we have argued, enhances the capacity for lessons learned in mandatory reconsideration to be translated into improvements within ongoing routine administration. The relational distance between the front-lines and secondary-lines of welfare administration are likely to vary according to context, however. Homelessness administration may well represent the thinner end of the wedge, in this respect.

Nonetheless, despite these qualifications, our data and analysis raise fundamental issues for administrative justice theory. And they urge caution in how we should assess mandatory reconsideration from an administrative justice perspective. Or, to put it a better way, our data on homelessness administration suggest that we must *investigate* the relationship between mandatory reconsideration and administrative justice, context by context, eschewing straightforward conclusions, paying attention, both empirically and theoretically, to the relationships between reconsideration practices, the interests of individual applicants who feel mistakes have been made, the quality of ongoing routine administration, and the administration of the redress system itself.

We have argued that the constellation of these interests and issues inevitably gives rise to tension, pulling the policy maker or theorist in more than one direction. Resolution of such tension must be done transparently, guided by an open discussion of the relative objective importance of the administrative decisions for individual welfare claimants, and of the significance of discretionary expertise within the welfare agency concerned. Given that these issues will vary according to policy area, we should expect to see variety overall in our normative assessments of mandatory reconsideration.